

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

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| |) | Order No.: SC-2013-5002-IMH |
| |) | |
| THE PEOPLE’S CHOICE |) | Service |
| USDOT 1298771 |) | Date: _____ |
| |) | |
| Joseph Washington, Jr. |) | Service |
| |) | Date: _____ |
| |) | |
| Joseph Washington, Sr. |) | Service |
| |) | Date: _____ |
| |) | |

IMMINENT HAZARD
OPERATIONS OUT-OF-SERVICE ORDER

This is an Imminent Hazard Operations Out-of-Service Order (“Order”) issued by the Secretary of Transportation pursuant to 49 U.S.C. § 521(b)(5)(A), 49 U.S.C. § 13905(f), 49 U.S.C. § 31144(c)(1), (2), and (5), and 49 C.F.R. § 386.72(b)(1), and pursuant to a delegation of authority to the Field Administrator, Southern Service Center, Federal Motor Carrier Safety Administration (“FMCSA”), United States Department of Transportation (“USDOT”), Atlanta, Georgia. This Order applies to The People’s Choice (USDOT# 1298771) and Joseph Washington, Jr. and Joseph Washington, Sr., individually (referred to collectively herein as “Carrier” and/or “it”) and to all vehicles owned or operated by The People’s Choice, including without limitation the commercial motor vehicles identified herein.

The Secretary and FMCSA find your operations and the continued operation of any commercial motor vehicle (including but not limited to VIN 1M8PDMTA4TP048368 and VIN 2PCH33495W1012579), referred to herein as “motor coaches” and/or “vehicles” constitutes an imminent hazard. This finding means that based upon your present state of unacceptable safety

compliance, your operation of any commercial motor vehicle poses an imminent hazard to public safety.

Effective immediately, you must cease operating any commercial motor vehicle, specifically including the commercial motor vehicles listed in this Order. “Operate” or “Operating” includes without limitation all interstate and intrastate transportation by drivers from all dispatching locations or terminals. The Carrier’s commercial motor vehicle(s), specifically including the commercial motor vehicles listed in this Order, may not be operated in interstate or intrastate commerce by any other motor carrier or any driver; such commercial motor vehicle may not be operated – even without passengers. Any movement of the Carrier’s commercial motor vehicles, specifically including the commercial motor vehicles identified in this Order, to any storage or repair or other location for the purposes of repair, sale, storage, or final destination must be accomplished only by towing, such that the commercial motor vehicle itself is not driven or operated. The Carrier’s commercial motor vehicles may be moved only upon the written approval of the Field Administrator for FMCSA’s Southern Service Center.

Commercial motor vehicles and their drivers now in interstate or intrastate commerce may proceed to their next immediate destination, which is defined as the next scheduled stop for vehicles already in motion where the passengers can be safely accommodated. (*See* 49 C.F.R. § 386.72(b)(4) and (5)).

THE CARRIER MAY NOT LOAD OR TRANSPORT ANY ADDITIONAL PASSENGERS, NOR MAY THE CARRIER OPERATE ANY COMMERCIAL MOTOR VEHICLE IN INTERSTATE OR INTRASTATE COMMERCE WHILE THIS ORDER IS IN EFFECT.

Within eight (8) hours of the service of this Order, the Carrier must submit to the Field Administrator in writing by facsimile the location of each of the commercial motor vehicles operated by the Carrier, including the vehicles identified in this Order. The submission must be sent to:

Field Administrator

404-327-7349 (facsimile)

I. JURISDICTION

The Carrier is a passenger motor carrier engaged in interstate commerce using commercial motor vehicles and employing drivers and is therefore subject to the Federal Motor Carrier Safety Regulations (“FMCSRs”), 49 C.F.R. Parts 350-399, and the alcohol and controlled substances regulations at 49 C.F.R. Part 40, as well as the Orders of the USDOT and FMCSA. (*See* 49 U.S.C. §§ 506, 507, 13501, 31133, 31136, and 31144). Joseph Washington, Jr. and Joseph Washington, Sr. are individuals who own, manage, control, direct or otherwise oversee the operations of the Carrier. The Carrier is required to comply with, and to ensure that its drivers comply with, the FMCSRs and Orders of the USDOT and FMCSA. (49 C.F.R. § 390.11). This Order has the force and effect of any other Order issued by the FMCSA and is binding upon the Carrier, Joseph Washington, Jr., and Joseph Washington, Sr., as well as any and all of its officers, members, directors, successors, assigns and closely affiliated companies. This Order applies to all motor carrier operations and all vehicles owned, leased, rented or otherwise operated by the Carrier, including but not limited to the vehicles identified in this Order.

II. BASIS FOR ORDER

The basis for determining that the Carrier’s motor carrier operations pose an imminent hazard to the public is the Carrier’s widespread and serious noncompliance with Federal safety

regulations.¹ The Carrier fails to ensure that its motor coaches are systematically and properly inspected, repaired and maintained and meet minimum safety standards. The Carrier falsified its most recent annual inspections on its two motor coaches and has operated a motor coach after the vehicle was placed out-of-service by the Georgia State Patrol. The Carrier is not inspecting pushout windows, emergency doors, and emergency marking lights on its motor coaches. The Carrier is not requiring its drivers to prepare driver vehicle inspection reports which identify any vehicle defects. The Carrier's inadequate maintenance program and its noncompliance with out-of-service orders substantially increases the risk of serious injury or death and is an imminently hazardous and potentially deadly situation for the Carrier's drivers and passengers and the motoring public.

The Carrier's compliance with FMCSA mandated controlled substances and alcohol use and testing requirements is also egregiously deficient. The Carrier is using drivers to transport passengers in its vehicles when the drivers are not subject to random testing for controlled substances or alcohol. The Carrier also used a driver to operate passenger-carrying commercial motor vehicles before receiving a negative pre-employment controlled substance test result. The Carrier's irresponsible actions in allowing unqualified drivers to operate its motor coaches substantially increases the likelihood of serious injury or death to the Carrier's drivers and passengers and the motoring public.

The Carrier also fails to oversee and monitor its drivers. The Carrier is not following FMCSA driver qualification requirements to ensure that its drivers are qualified to operate its passenger-carrying vehicles. The Carrier does not have safety management practices in place

¹ Joseph Washington, Sr., as the President, and Joseph Washington, Jr., as the Vice-President, are responsible for ensuring the Carrier's compliance with the FMCSRs.

to ensure its drivers are preparing and submitting accurate records of duty status and that they comply with the maximum hours of service limitations. The Carrier is not requiring its drivers to turn in all records of duty status and supporting documents related to the records of duty status. The Carrier's continued and blatant disregard for the FMCSRs substantially increases the likelihood of serious injury or death and is an imminently hazardous and potentially deadly risk for its drivers and passengers and for the motoring public.

III. BACKGROUND

On or around August 7, 2013, FMCSA initiated an investigation of the Carrier as part of its 2013 passenger carrier safety initiative. The Carrier was identified for investigation because it was cited in a prior Compliance Review, conducted on September 15, 2010, for 3 serious regulatory violations: 49 C.F.R. § 382.305, failing to implement a random controlled substance and/or an alcohol testing program; 49 C.F.R. § 395.8(a), failing to require a driver to make a record of duty status; and 49 C.F.R. § 395.8(k)(1), failing to preserve driver's records of duty status supporting documents for 6 months.

FMCSA's investigation uncovered egregious regulatory violations demonstrating the Carrier's flagrant disregard for motor vehicle passenger safety.² The Carrier does not have a systematic vehicle inspection, repair, and maintenance program in place to prevent the operation of unsafe motor vehicles,³ and was unable to produce the required vehicle records containing the date and nature of inspections, repairs, and maintenance conducted on its motor

² As part of its investigation, FMCSA completed a compliance review of the Carrier. The Carrier received a proposed safety rating of "Unsatisfactory."

³ See 49 C.F.R. § 396.3(a) ("Every motor carrier...must systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicle...equipment subject to its control.")

coaches. The Carrier is not inspecting push-out windows, emergency doors, and emergency marking lights on its motor coaches. Further, the Carrier is not requiring its drivers to prepare driver vehicle inspection reports that identify vehicle defects.

FMCSA investigators also discovered that the Carrier continued to operate a motor coach after the vehicle was placed out-of-service for defective brakes. On June 27, 2013, a Georgia State Patrol officer stopped one of the Carrier's motor coaches on I-95 to conduct a Level 1 inspection. At the time of the inspection, Joseph Washington, Jr.⁴ was driving the passenger-carrying vehicle from Yameessee, South Carolina to Orlando, Florida. At the conclusion of the inspection, the Georgia State Patrol officer informed Mr. Washington that the vehicle was being placed out-of-service for defective brakes and that it could not be driven until the brakes were repaired. The Georgia State Patrol officer instructed Mr. Washington to drive to the next exit so that the passengers on the motor coach could safely disembark from the motor coach. The Georgia State Patrol officer specifically instructed Mr. Washington not to drive the motor coach past the next exit until the necessary repairs were made. Despite the clear instruction, Mr. Washington did not stop at the next exit, but continued to Orlando, Florida. Furthermore, Mr. Washington provided a false statement to the FMCSA investigator averring that he had the brakes repaired in Orlando, Florida. In fact, the Carrier continued to operate this motor coach for several weeks without repair to the vehicle's brakes. On July 10, 2013, a Georgia State Patrol officer again stopped the same motor coach to conduct a Level 1 inspection while the vehicle was transporting passengers to Hardeeville, South Carolina. The motor coach was again placed out-of-service for defective brakes. The Carrier's operation of a motor coach when it knew that the motor coach was placed out-of-service is a flagrant

⁴ Joseph Washington, Jr. is the Vice-President of the Carrier.

disregard for regulations and/or orders and for passenger safety.

Moreover during the investigation, FMCSA discovered that the Carrier falsified the most recent annual inspections on its two motor coaches.⁵ The Carrier provided two Annual Vehicle Inspection Reports to FMCSA investigators. Further investigation revealed that the signature on the Reports was false. The Carrier's dispatch of motor coaches that had not passed annual inspections combined with evidence of an ineffective or nonexistent vehicle maintenance program substantially increases the likelihood of serious injury or death.

The Carrier's compliance with FMCSA mandated controlled substances and alcohol use and testing requirements is also egregiously deficient. The Carrier has not implemented an alcohol or controlled substances testing program to ensure that its drivers are able to safely operate its commercial motor vehicles. The Carrier has repeatedly been warned and cited for its failure to implement an alcohol or controlled substances testing program.⁶ The Carrier also allowed a driver to operate a motor coach before the Carrier had received a negative pre-employment controlled substance test result. The Carrier's irresponsible actions in allowing unqualified drivers to operate its motor coaches substantially increase the likelihood of serious injury or death to the Carrier's drivers and passengers and the motoring public.

The Carrier fails to follow FMCSA driver qualification requirements to ensure that its drivers are qualified to operate its commercial motor vehicles. The Carrier's driver

⁵ Annual inspections are important to vehicle safety because these inspections include the motor coaches' brake system, coupling devices, exhaust system, fuel system, lighting devices, safe loading, steering mechanism, suspension, frame, tires, wheels and rims, windshield glazing, and windshield wipers. 49 C.F.R. § 396.17(c).

⁶ On or around May 13, 2009, the FMCSA conducted a Compliance Review of the Carrier and cited the Carrier with failing to implement an alcohol and/or controlled substances testing program. On or around September 15, 2010, the FMCSA conducted another Compliance Review of the Carrier and again cited the Carrier with failing to implement an alcohol and/or controlled substances testing program.

qualification files were missing employment applications, State responses to annual driver record inquiries, lists of violations of motor vehicle laws and ordinances, and medical examiner's certificates.

The Carrier also fails to properly oversee its drivers. The Carrier does not have safety management practices in place to ensure its drivers are preparing and submitting records of duty status and that they comply with the maximum hours of service limitations. FMCSA investigators uncovered false records of duty status in addition to missing records of duty status and missing supporting documents related to the records of duty status.

Individually and cumulatively, these violations and conditions of dispatch and operation substantially increase the likelihood of serious injury or death to the Carrier's drivers and passengers and the motoring public.

IV. REMEDIAL ACTION

To eliminate this imminent hazard, and before the Carrier will be permitted to resume operations placed out-of-service by this Order, the Carrier must take specific steps to ensure and demonstrate compliance with the FMCSRs.

1. The Carrier must drastically change its company and management philosophy regarding driver oversight and vehicle maintenance.
2. The Carrier must establish a DOT controlled substance and alcohol testing program in compliance with 49 C.F.R. Parts 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs) and 382 (Controlled Substances and Alcohol Use and Testing) and provide evidence of this program to the Southern Service Center Field Administrator. The Carrier must use only those laboratories certified by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration for the analysis of urine

specimens. The Carrier must implement a policy on the misuse of alcohol and controlled substances that conforms to 49 C.F.R. § 382.601(b). The Carrier must ensure that driver supervisors undergo at least 60 minutes of training on alcohol misuse as well as an additional 60 minutes of training on controlled substance use that conforms to 49 C.F.R. § 382.603.

3. The Carrier must ensure that each driver selected for random controlled substances or alcohol testing has an equal chance of being selected each time selections are made. The Carrier must ensure that it has received a negative pre-employment controlled substances test for each driver before using that driver to perform safety-sensitive functions. The Carrier must establish policies and procedures to ensure that it does not dispatch a driver who has tested positive for controlled substances or alcohol until that driver has completed the return-to-duty process in 49 C.F.R. Part 40.

4. The Carrier must ensure that it maintains driver qualification files, as required by 49 C.F.R. Part 391. The Carrier must ensure that every driver it uses has completed and furnished an employment application. The Carrier must investigate each driver's background within 30 days of employment, and must maintain a copy of the response from each State agency in the driver's qualification file. The Carrier must ensure that it obtains from each driver an annual list of traffic violations and an annual Motor Vehicle Record, and that it performs an annual review on each driver's driving record. The Carrier must ensure that it performs a three-year previous employment check on its drivers prior to their operating a commercial motor vehicle, in accordance with 49 C.F.R. § 391.23. The Carrier must ensure each driver possesses a DOT medical examiner's certificate as well as ensure that a copy of each driver's medical examiner's certificate is maintained in the driver's qualification file.

5. The Carrier must take aggressive and progressive steps to control drivers' hours

of service.

6. The Carrier must implement a dispatch system that ensures that no driver will be dispatched on any trip unless the driver has the necessary available hours of service to complete the trip in accordance with 49 C.F.R. Part 395.

7. The Carrier must ensure that each of its drivers records his or her duty status for each 24-hour period in accordance with 49 C.F.R. § 395.8. The Carrier must ensure that each of its drivers complies with the hours of service rules in 49 C.F.R. § 395.8. The Carrier must maintain each record of duty status for a minimum of six months in accordance with 49 C.F.R. § 395.8.

8. The Carrier must implement a system to ensure that all drivers accurately complete their records of duty status in the form and manner required in 49 C.F.R. Part 395. The Carrier must ensure that its drivers accurately complete their daily records of duty status and that they submit these records to the Carrier within 13 days of their completion. The Carrier must maintain drivers' records of duty status and demonstrate a system showing that the company can and will maintain all supporting documents. Further, the Carrier must ensure that all records of duty status are accurate by using all means available to the Carrier and by comparing each record with all supporting documentation.

9. The Carrier must ensure that all drivers are adequately trained in the requirements of the FMCSRs and that they are able to conduct motor carrier operations consistent with those regulations.

10. The Carrier must submit to the Field Administrator a plan detailing how it will (i) train all drivers used on compliance with the HOS regulations, (ii) monitor the compliance of all drivers with the HOS regulations, and (iii) ensure that all drivers are dispatched in such a way that

scheduled routes may be completed within the maximum driving and on-duty hours, as provided in 49 C.F.R. § 395.5.

11. The Carrier must establish safety management controls and procedures that ensure that each and every commercial motor vehicle it operates is systematically and properly inspected, maintained and repaired as required by 49 C.F.R. Part 396, and that documentation of inspections, maintenance and repair are obtained and maintained as required.

12. The Carrier must demonstrate that it has an effective commercial motor vehicle maintenance program in place to inspect, maintain, and repairs its fleet and ensure compliance with the FMCSRs. The Carrier must ensure and demonstrate that vehicle maintenance and safety is a company priority and must ensure and demonstrate that inspection records are accurately completed.

13. The Carrier must ensure and demonstrate that its vehicles are in a safe operating condition and are in full compliance with 49 C.F.R. Part 393 (Parts and Accessories Necessary for Safe Operations) and Part 396 (Vehicle Maintenance).

14. The Carrier must require its drivers to prepare Driver Vehicle Inspection Reports at the end of each day, implement a procedure so that its drivers can report safety defects and/or deficiencies, and establish and abide by procedures to ensure that reported safety defects and/or deficiencies are repaired immediately before the commercial motor vehicle is operated again. The Carrier must train its drivers and ensure all drivers understand the meaning of a roadside out-of-service order and comply with roadside out-of-service orders.

15. The Carrier must establish safety management controls and procedures to ensure that defects and deficiencies discovered during inspections of its commercial motor vehicles are repaired prior to the vehicle being operated. The Carrier must ensure that no commercial motor

vehicle that fails, or has failed, a safety inspection is used for the transportation of passengers prior to necessary repairs being made and the vehicle passing an appropriate safety inspection.

16. The Carrier must contact FMCSA's South Carolina Division and arrange for inspection of each of its commercial motor vehicles by an FMCSA inspector or an inspector designated by FMCSA.

17. The Carrier must comply with all Orders issued by FMCSA.

V. RESCISSION OF ORDER

The Carrier is subject to this Order unless and until the Order is rescinded in writing by FMCSA. Unless and until this Order is rescinded, and until such time as the Carrier has a valid and active USDOT number and operating authority registration, the Carrier is prohibited from operating any commercial motor vehicle in interstate and/or intrastate commerce. This Order will not be rescinded until the Field Administrator for FMCSA's Southern Service Center has determined that the Remedial Action requirements specified in Paragraph IV of this Order have been fully satisfied and acceptable documentation submitted.

Before this Order will be rescinded, the Carrier must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard that its operations and motor vehicles pose, and adequately demonstrate to the Field Administrator's satisfaction the actions taken to eliminate the safety problems. The Carrier cannot avoid this Order by continuing operations under the name of another person or company. Any sale, lease, or other transfer of commercial motor vehicle(s) and/or direct assignment of contract(s) or other agreement(s) for service by the Carrier requires the written approval of the Southern Service Center Field Administrator. Any such action taken in anticipation of this Order must cease immediately.

Prior to rescission of this Order, the Carrier will be required to:

- 1. Identify the cause for its noncompliance.**
- 2. Develop a detailed Safety Management Plan of action that addresses each area of non-compliance, the steps it intends to take to overcome its non-compliance, and a time table for these steps.**
- 3. Certify in writing the commitment of the Carrier to comply with the FMCSRs.**
- 4. Execute the Safety Management Plan and provide certification by all owners and officers.**

Any request to rescind this Order and documentation demonstrating satisfaction of the Remedial Action requirements must be directed to the Field Administrator, Southern Service Center, with a copy to the Division Administrator, South Carolina Division, at the following addresses:

Field Administrator, Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Blvd., NE, Suite 1700
Atlanta, Georgia 30345

Division Administrator, South Carolina Division
Federal Motor Carrier Safety Administration
1835 Assembly Street, Suite 1253
Columbia, South Carolina 29201-2430

Rescission of this Order does not constitute a reinstatement of the Carrier's Federal operating authority registration or its USDOT Number. In order for the Carrier to resume motor carrier operations in the United States, the Carrier will be required to apply to reactivate its USDOT number registration, reapply for and receive operating authority registration, and demonstrate that the Carrier is fit and willing and able to comply with: 1) the statutory and regulatory registration requirements; 2) applicable safety regulations including the FMCSRs; 3) the commercial motor vehicle safety requirements of employers and employees set forth in 49

U.S.C. § 31135; 4) the safety fitness requirements set forth in 49 U.S.C. § 31144; and 5) minimum financial responsibility requirements established under 49 U.S.C. §§ 13906 and 31138.

VI. FAILURE TO COMPLY

Failure to comply with the provisions of this Order may subject the Carrier to an action in the United States District Court for equitable relief and punitive damages. The Carrier may be assessed civil penalties of up to \$25,000 for a violation of this Order. (49 U.S.C. § 521(b)(2)(F) and 49 C.F.R. Part 386 App. A. § IV(g)). If violations are determined to be willful, criminal penalties may be imposed, including a fine of up to \$25,000 and imprisonment for a term not to exceed one year. (49 U.S.C. § 521 (b)(6)(A)).

VII. PENALTIES FOR VIOLATIONS

Any motor carrier that violates Federal requirements, including the FMCSRs, and/or permits its employee(s) to violate Federal requirements is subject to civil and/or criminal penalty provisions. Penalty provisions for violations of Federal statutes and regulations are separate and distinct from this Order. Penalties may be assessed for the violations of Federal requirements, including the FMCSRs and Orders of the FMCSA, previously discovered, discovered after the service of this Order, and/or discovered during subsequent investigations.

VIII. RIGHT TO REVIEW

You have the right to administrative review in accordance with 5 U.S.C. § 554 and 49 C.F.R. § 386.72(b)(4). An administrative review, if requested, must occur within 10 days of the issuance of this Order. (49 U.S.C. § 521(b)(5) and 49 C.F.R. § 386.72(b)(4)). A request for review must be addressed to the Assistant Administrator, United States Department of Transportation, Federal Motor Carrier Safety Administration, with a copy sent to FMCSA's Adjudications Counsel and the Field Administrator, Southern Service Center at the following

addresses:

Assistant Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Federal Motor Carrier Safety Administration
Office of the Chief Counsel - Adjudications
1200 New Jersey Avenue S.E., W61-323
Washington, DC 20590

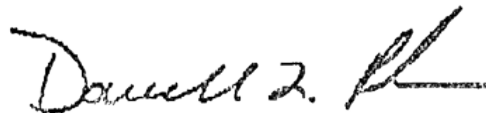
Field Administrator, Southern Service Center
Federal Motor Carrier Safety Administration
1800 Century Blvd., NE, Suite 1700
Atlanta, GA 30345

The request must state the material facts at issue which you believe dispute or contradict the finding that The Carrier' operations constitute an imminent hazard to the public.

**A REQUEST FOR ADMINISTRATIVE REVIEW DOES NOT IN ANY WAY
SUSPEND OR DELAY YOUR DUTY TO COMPLY WITH THIS ORDER**

IMMEDIATELY. This Order is separate and independent from all other orders or actions that may be issued by FMCSA, and does not amend or modify any other such orders or actions. Any request for administrative review of this Order does not attach to or apply to any other order or action.

Date: August 14, 2013



Darrell Ruban, Field Administrator
United States Department of Transportation
Federal Motor Carrier Safety Administration